

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSEPH J. HESKETH III, on his behalf
and on behalf of other similarly situated
persons,

Plaintiff,

v.

TOTAL RENAL CARE, INC., on its own
behalf and on behalf of other similarly
situated persons,

Defendant.

No. 2:20-cv-01733-JLR

STIPULATED PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery; the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

STIPULATED PROTECTIVE ORDER
(No. 2:20-cv-01733-JLR) –1

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Phone: 206.359.8000
Fax: 206.359.9000

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged:

4 2.1. Trade secret or otherwise proprietary material;

5 2.2. Other confidential information regarding the parties’ intellectual property, or that
6 of third parties, including but not limited to reports that summarize such intellectual property and
7 management of the same;

8 2.3. Sensitive company financial information that is not otherwise publicly available;

9 2.4. Data regarding compensation earned by or paid to employees of DaVita and its
10 subsidiaries;

11 2.5. Materials regarding current, former, or prospective employees of DaVita and its
12 subsidiaries, other than the named plaintiff, or materials regarding third parties that contain
13 “personal information,” meaning any personal address, telephone, or email information;
14 information about employees’ family members; Social Security, driver’s license, and/or tax
15 identification numbers; health, illness/injury, medical, or workers’ compensation-based
16 information of the employee; and personal financial information;

17 2.6. Accounting or audit information, including but not limited to any financial
18 account number, access code, or password;

19 2.7. Documents that otherwise describe, contain or disclose internal company or
20 organizational information, including customer information, competitive or strategic initiatives
21 or policies, and business plans and other business-related information; and

22 2.8. Any other information that a party in good faith believes constitutes or includes
23 sensitive business or organizational information, or personal information or information
24 furnished in confidence by any third party that is not known or freely accessible to the general
25 public.
26

1 3. SCOPE

2 The protections conferred by this agreement cover not only confidential material (as
3 defined above), but also (1) any information copied or extracted from confidential material; (2)
4 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
5 conversations, or presentations by parties or their counsel that might reveal confidential material.

6 However, the protections conferred by this agreement do not cover information that is in
7 the public domain or becomes part of the public domain through trial or otherwise.

8 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

9 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
10 or produced by another party or by a non-party in connection with this case only for prosecuting,
11 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
12 the categories of persons and under the conditions described in this agreement. Confidential
13 material must be stored and maintained by a receiving party at a location and in a secure manner
14 that ensures access is limited to the persons authorized under this agreement.

15 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
16 ordered by the court or permitted in writing by the designating party, a receiving party may
17 disclose confidential material only to:

18 (a) the receiving party’s counsel of record in this action, as well as employees
19 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

20 (b) the officers, directors, and employees (including in-house counsel) of the
21 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
22 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
23 designated;

24 (c) experts and consultants to whom disclosure is reasonably necessary for
25 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
26 A);

(d) the court, court personnel, and court reporters and their staff;

(e) copy or imaging services retained by counsel to assist in the duplication of confidential material, provided that counsel for the party retaining the copy or imaging service instructs the service not to disclose any confidential material to third parties and to immediately return all originals and copies of any confidential material;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with the strong presumption of public access to the Court’s files.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
3 or non-party that designates information or items for protection under this agreement must take
4 care to limit any such designation to specific material that qualifies under the appropriate
5 standards. The designating party must designate for protection only those parts of material,
6 documents, items, or oral or written communications that qualify, so that other portions of the
7 material, documents, items, or communications for which protection is not warranted are not
8 swept unjustifiably within the ambit of this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
10 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
11 unnecessarily encumber or delay the case development process or to impose unnecessary
12 expenses and burdens on other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated
14 for protection do not qualify for protection, the designating party must promptly notify all other
15 parties that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this
17 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
18 ordered, disclosure or discovery material that qualifies for protection under this agreement must
19 be clearly designated as such before or when the material is disclosed or produced.

20 (a) Information in documentary form: (e.g., paper or electronic documents
21 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
22 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
23 contains confidential material. If only a portion or portions of the material on a page qualifies for
24 protection, the producing party also must clearly identify the protected portion(s) (e.g., by
25 making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at trial, the issue should be addressed during the pre-trial conference.

(c) Other tangible items: the producing party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the designating party's right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in

1 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
 2 conference with other affected parties in an effort to resolve the dispute without court action. The
 3 certification must list the date, manner, and participants to the conference. A good faith effort to
 4 confer requires a face-to-face meeting or a telephone conference.

5 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 6 intervention, the designating party may file and serve a motion to retain confidentiality under
 7 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 8 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 9 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
 10 other parties) may expose the challenging party to sanctions. All parties shall continue to
 11 maintain the material in question as confidential until the court rules on the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER 13 LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that compels
 15 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
 16 party must:

17 (a) promptly notify the designating party in writing and include a copy of the
 18 subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to issue in
 20 the other litigation that some or all of the material covered by the subpoena or order is subject to
 21 this agreement. Such notification shall include a copy of this agreement; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 23 designating party whose confidential material may be affected.

24 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a receiving party learns that, inadvertently or otherwise, it has disclosed confidential
 26 material to any person or in any circumstance not authorized under this agreement, the receiving

1 party must immediately (a) notify in writing the designating party of the unauthorized
2 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
3 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
4 this agreement, and (d) request that such person or persons execute the “Acknowledgment and
5 Agreement to Be Bound” that is attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
7 MATERIAL

8 When a producing party gives notice to receiving parties that certain inadvertently
9 produced material is subject to a claim of privilege or other protection, the obligations of the
10 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
11 provision is not intended to modify whatever procedure may be established in an e-discovery
12 order or agreement that provides for production without prior privilege review. The parties
13 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

14 10. NON-TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this action, including all appeals, each receiving
16 party must return all confidential material to the producing party, including all copies, extracts
17 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
18 destruction.

19 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
20 documents filed with the court; trial, deposition, and hearing transcripts; correspondence;
21 deposition and trial exhibits; expert reports; attorney work product; and consultant and expert
22 work product, even if such materials contain confidential material.

23 The confidentiality obligations imposed by this agreement shall remain in effect until a
24 designating party agrees otherwise in writing or a court orders otherwise.
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: April 27, 2021

3
4 *s/ Christina L. Henry*

5 Christina L Henry, WSBA 31273
6 Email: chenry@hdm-legal.com
7 **HENRY & DEGRAFF, PS**
8 787 Maynard Ave S
9 Seattle, WA 98104
10 Telephone: 206-330-0595
11 Facsimile: 206-400-7609

12 J. Craig Jones
13 *Pro Hac Vice*
14 Email: craig@joneshilllaw.com
15 **JONES & HILL, LLC**
16 131 Highway 165 South
17 Oakdale, LA 71463
18 Telephone: 318-335-1333
19 Facsimile: 318-335-1934

20 Scott C. Borison
21 *Pro Hac Vice*
22 Email: scott@borisonfirm.com
23 **BORISON FIRM, LLC**
24 1900 S. Norfolk Rd. Suite 350
25 San Mateo CA 94403
26 Telephone: 301-620-1016
Facsimile: 301-620-1018

Attorneys for Plaintiff
Joseph J. Hesketh III

s/ Chelsea Dwyer Petersen


Chelsea Dwyer Petersen, WSBA No. 33787
CDPetersen@perkinscoie.com
Heather Shook, WSBA No. 56610
HShook@perkinscoie.com
Margo Jasukaitis, WSBA No. 57045
MJasukaitis@perkinscoie.com
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206.359.8000
Facsimile: 206.359.9000

Attorneys for Defendant
Total Renal Care, Inc.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents in this proceeding shall not, for the purposes of this proceeding or any other federal
4 or state proceeding, constitute a waiver by the producing party of any privilege applicable to
5 those documents, including the attorney-client privilege, attorney work-product protection, or
6 any other privilege or protection recognized by law.

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9 Dated: April 28, 2021



Honorable James L. Robart
United States District Court Judge

10
11 Presented by:

12 By: s/ Chelsea Dwyer Petersen
13 Chelsea Dwyer Petersen #33787
Perkins Coie LLP
14 1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
15 Telephone: 206.359.8000
Facsimile: 206.359.9000
16 Email: CDPetersen@perkinscoie.com

17 Attorney for Defendant
18 Total Renal Care, Inc.
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EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Western District of Washington on [date] in the
 case of Joseph J. Hesketh III v. Total Renal Care, Inc., Case No. 2:20-cv-01733-JLR. I agree to
 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
 and acknowledge that failure to so comply could expose me to sanctions and punishment in the
 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
 item that is subject to this Stipulated Protective Order to any person or entity except in strict
 compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____